IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL APPLICATION No.9721 OF 2005
IN & WITH
SPECIAL CIVIL APPLICATION No. 4400 of 2004
WITH
CIVIL APPLICATION No.9720 OF 2005
IN & WITH
SPECIAL CIVIL APPLICATION No. 4411 of 2004
WITH
CIVIL APPLICATION No.9722 OF 2005
IN & WITH
SPECIAL CIVIL APPLICATION No. 4410 of 2004
WITH
CIVIL APPLICATION No.9719 OF 2005
IN & WITH
SPECIAL CIVIL APPLICATION No. 4402 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CITY CO-OPERATIVE BANK LTD - Petitioner(s)
Versus
HARSHADBHAI BABUBHAI SHAH & 3 - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Petitioner(s) : 1,
MR GM JOSHI for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 20/03/2006

ORAL JUDGMENT

1.In all the petitions, the challenge by the petitioner is against the common order passed by the Gujarat Co-operative Tribunal in Revision Application No.96 of 2004 to 98 of 2004 whereby, the Revisions were dismissed and it is observed that the learned Nominee shall decide the application on merits after the reply is submitted and after the opportunity is given to all concerned.

2.I have heard Mr.N.D. Nanavati, learned counsel appearing with Mr.Tushar Mehta for the petitioner and Mr.S.N. Thakkar for Mr.G.M. Joshi for the respondents.

3.It appears that the respondents herein have preferred the application before the learned Nominee for the prayer inter alia to declare

that the consent award passed on the basis of pursis is illegal, unconstitutional and by playing fraud and it was also prayed in the application that the main suit be decided on merits afresh after giving opportunity of hearing to all concerned. In the said application, various averments are made for alleging that no actual loan transaction had taken place and that no signature was taken on pursis and that the applicants were not present and they were not informed etc. etc. The learned Nominee has passed the order on 01.03.2004 of issuing notice upon the said application and it may also be recorded that together with the application for restoration, the application for condonation of delay was also made and below the said application, also the learned Nominee has passed the order of issuing notice on 01.03.2004.

4.It appears that the petitioner-bank has

preferred the revision against the order passed by the learned Nominee of issuing notice upon the aforesaid application and the said revisions were ultimately heard by the learned Tribunal and the learned Tribunal observed inter alia that at this stage, the learned Nominee has only issued the notice and the petitioner-bank can submit the reply and the learned Nominee has to examine the matter and at this stage, there is no case for allowing the revision and, therefore, the learned Tribunal has dismissed the revision and vacated the interim order pending the revision. Further, it is directed that the learned Nominee shall decide the matter after the reply is submitted by the bank and after giving opportunity of hearing to all concerned as per the observations made in the judgment. It is under these circumstances, the petitioner-bank has approached to this Court by preferring this petitions.

5.The scope of judicial scrutiny by this Court in exercise of power under Article 227 of the Constitution of India is by now well settled. Unless, the action or the proceedings are wholely without jurisdiction, normally this Court would not issue a writ of prohibition or a writ of certiorari either for restraining the authority or the forum from proceeding further with the matter or for quashing the proceedings before the authority or the forum, as the case may be. In the present case, there is no dispute on the point that the consent awards were passed. Whether such consent awards were passed on the basis of genuine consent or not and whether any parties to the proceedings have played any fraud while procuring or producing the consent pursis or not and whether there was any misrepresentation made before the learned Nominee on either side leading the learned Nominee to pass the consent award or not are

essentially the questions to be decided by the very Court or the Forum which has passed the order for consent award. If any fraud is played before any forum or Court or quasi judicial authority or a forum having trapping of the Court or if any misrepresentation is made and the Court or the forum is led to pass any order based on such misrepresentation, the very Court or the forum will have inbuilt or inherent power to examine the said aspects. Therefore, it is not a matter where the learned Nominee who has passed the consent award, has no jurisdiction to examine the aspects as to whether the consent award was passed by playing fraud or there was any misrepresentation etc. etc. as alleged in the application.

6.Therefore, it is not a matter where there is inherent lake of jurisdiction on the part of the learned Nominee for entertaining the application in the concerned suit.

7.In addition to the above, the matter was at the notice stage. The learned Nominee has only issued notice and the petitioner-bank could have submitted the reply by raising all contentions as may be available on merits pointing out that there was no fraud or misrepresentation etc., as alleged in the application. The learned Nominee had yet to decide the application and at that stage, the petitioner had preferred the revisions before the learned Tribunal. The learned Tribunal has rightly observed that the matter was at the notice stage and the learned Nominee has yet to decide the contentions raised in the application after giving opportunity of hearing to all concerned and therefore, the learned Tribunal has not interfered with the orders of the learned Nominee which were challenged before it.

8.In view of the aforesaid observations and discussions, it cannot be said that there is any jurisdictional error committed by the learned Nominee or by the learned Tribunal while passing the impugned orders nor can it be said that the exercise of the discretion is so perverse which may call for interference by this Court in exercise of the power under Article 227 of the Constitution of India. As such, the learned Nominee has properly exercised the discretion by issuing notice and the learned Tribunal has also properly exercised the discretion by not interfering with the matter since the matter was at the notice stage before the learned Nominee and the learned Nominee had yet to take final decision after giving opportunity of hearing to all concerned.

9.In view of the above, all the petitions fail. Hence, they are dismissed. Rule is discharged.

Considering the facts and circumstances, there shall be no order as to cost.

10.In view of the order passed in the main Special Civil Applications, Civil Application Nos.9721 of 2005, 9720 of 2005, 9722 of 2005 and 9719 of 2005 would not survive. Hence, the Civil Applications are disposed of accordingly.

(JAYANT PATEL,J.)

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